

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS TAMI HAWKINS (b) County of Residence of First Listed Plaintiff <u>BUCKS</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C. 30 EAST BUTLER PIKE, AMBLER, PA 19002 PHONE: (215) 540-8888 EXT. 116	DEFENDANTS CONSUMERS UNITED, INC. d/b/a GOJI County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State <input type="checkbox"/> 1</td> <td>Citizen of This State <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4</td> <td>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5</td> <td>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td>Foreign Nation <input type="checkbox"/> 6</td> <td>Foreign Nation <input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input type="checkbox"/> 1	Citizen of This State <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4	Citizen of Another State <input type="checkbox"/> 2	Citizen of Another State <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6	Foreign Nation <input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS <table style="width: 100%;"> <tr> <td style="vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice </td> <td style="vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table> CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability
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| **FORFEITURE/PENALTY** ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other **LABOR** ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act **IMMIGRATION** ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions | **BANKRUPTCY** ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 **PROPERTY RIGHTS** ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark **SOCIAL SECURITY** ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) **FEDERAL TAX SUITS** ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609 |
| **OTHER STATUTES** ☐ 375 False Claims Act ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☒ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes | |

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. § 227 et seq. Brief description of cause: TELEPHONE CONSUMER PROTECTION ACT
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ _____	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY (See instructions):	JUDGE _____	DOCKET NUMBER _____
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DATE 07/23/2015 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 832 Hossler Road, Manheim, PA 17545

Address of Defendant: 31 Street James Avenue, 4th Floor, Boston, MA 02116

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 47 U.S.C. § 227 et seq.

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 07-23-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 07-23-15

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

TAMI HAWKINS

v.

CONSUMERS UNITED, INC. d/b/a

GOJI

CIVIL ACTION


NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

07-23-15
Date


Attorney-at-law

Plaintiff, Tami Hawkins
Attorney for

215-540-8888 x 116

877-788-2864

kimmel@creditlaw.com

Telephone**FAX Number****E-Mail Address**

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 TAMI HAWKINS,)
5 Plaintiff)
6 v.) Case No.:
7) COMPLAINT AND DEMAND FOR
8 CONSUMERS UNITED, INC. d/b/a) JURY TRIAL
9 GOJI,)
10 Defendant) (Telephone Consumer Protection
Act)

11
12 **COMPLAINT**

13 TAMI HAWKINS ("Plaintiff"), by and through her attorneys, KIMMEL &
14 SILVERMAN, P.C., alleges the following against CONSUMERS UNITED, INC.
15 d/b/a GOJI ("Defendant"):
16

17 **INTRODUCTION**

18 1. Plaintiff's Complaint is based on the Telephone Consumer Protection
19 Act ("TCPA"), 47 U.S.C. § 227 *et seq.*
20

21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See
23 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).
24
25

1 3. Defendant conducts business in the Commonwealth of Pennsylvania
2 and as such, personal jurisdiction is established.

3 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
4

5 **PARTIES**

6 5. Plaintiff is a natural person residing in Manheim, Pennsylvania
7 17545.

8 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).
9

10 7. Defendant is a corporation with its headquarters located at 31 Street
11 James Avenue, 4th Floor, Boston, Massachusetts 02116

12 8. Defendant is a “person” as that term is defined by 47 U.S.C.
13 §153(39).
14

15 9. Defendant acted through its agents, employees, officers, members,
16 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
17 representatives, and insurers.

18 **FACTUAL ALLEGATIONS**

19 10. Plaintiff has a cellular telephone number that she has had for more
20 than one year.
21

22 11. Plaintiff has only used this number as a cellular telephone number.
23

24 12. The phone number has been assigned to a cellular telephone service
25 for which Plaintiff incurs a charge for incoming calls.

1 13. Between June 15 and June 18, 2015, Defendant repeatedly called
2 Plaintiff on her cellular telephone from the following telephone number: (717)
3 441-6001.

4 14. When contacting Plaintiff on her cellular telephone, Defendant used
5 an automatic telephone dialing system and automated and/or pre-recorded
6 messages.
7

8 15. Defendant's automated messages would identify the name of the
9 company and state that Defendant was calling to offer Plaintiff cheaper car
10 insurance.
11

12 16. The automated message gave Plaintiff the option to press a particular
13 number on her telephone in order to be placed on the "Do Not Call" list.
14

15 17. Between June 15 and June 17, 2015, Plaintiff received approximately
16 ten (10) and perhaps more, automated pre-recorded calls from Defendant.

17 18. Defendant's telephone calls were not made for "emergency
18 purposes."
19

20 19. Plaintiff never spoke to a live representative of Defendant.

21 20. On June 17, 2015, Plaintiff received another automated, pre-recorded
22 call from Defendant and pressed the number that would allow her to stop the
23 telephone calls.
24
25

1 21. Despite the fact that Plaintiff selected the "Do Not Call" option,
2 Defendant continued to place automated, pre-recorded calls to Plaintiff's cellular
3 telephone.

4 22. On June 18, 2015, for example, Defendant placed six (6) automated,
5 pre-recorded calls to Plaintiff's cellular telephone.
6

7 23. These additional phone calls were not made for "emergency
8 purposes."
9

10 **DEFENDANT VIOLATED THE**
11 **TELEPHONE CONSUMER PROTECTION ACT**

12 24. Plaintiff incorporates the forgoing paragraphs as though the same
13 were set forth at length herein.

14 25. Defendant initiated multiple automated telephone calls to Plaintiff's
15 cellular telephone using a prerecorded voice and without her express prior consent.
16

17 26. Defendant initiated these automated calls to Plaintiff using an
18 automatic telephone dialing system.

19 27. Defendant's calls to Plaintiff were not made for emergency purposes.

20 28. Defendant's calls to Plaintiff after June 17, 2015 were not made with
21 Plaintiff's prior express consent.
22

23 29. Defendant's acts as described above were done with malicious,
24 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
25 under the law and with the purpose of harassing Plaintiff.

1 30. The acts and/or omissions of Defendant were done unfairly,
2 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
3 lawful right, legal defense, legal justification or legal excuse.

4 31. As a result of the above violations of the TCPA, Plaintiff has suffered
5 the losses and damages as set forth above entitling Plaintiff to an award of
6 statutory, actual and trebles damages.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, TAMI HAWKINS, respectfully prays for a
10 judgment as follows:
11

- 12 a. All actual damages suffered pursuant to 47 U.S.C. §
13 227(b)(3)(A);
14 b. Statutory damages of \$500.00 per violative telephone call
15 pursuant to 47 U.S.C. § 227(b)(3)(B);
16 c. Treble damages of \$1,500.00 per violative telephone call
17 pursuant to 47 U.S.C. §227(b)(3);
18 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
19 e. Any other relief deemed appropriate by this Honorable Court.
20
21
22
23
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff TAMI HAWKINS, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 7/22/15

KIMMEL & SILVERMAN, P.C.

By: 

CRAIG THOR KIMMEL

Attorney ID # 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Fax: (877) 788-2864

Email: kimmel@creditlaw.com